

1 PHILLIP A. TALBERT
2 Acting United States Attorney
3 KATHERINE E. SCHUH
4 Assistant United States Attorney
5 2500 Tulare Street, Suite 4401
6 Fresno, CA 93721
7 Telephone: (559) 497-4000
8 Facsimile: (559) 497-4099

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10 Attorneys for Plaintiff
11 United States of America

12
13 IN THE UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

v.

17 JASON CELES,

18 Defendant.

CASE NO. 1:20-CR-00056-NONE-SKO

19 STIPULATION REGARDING EXCLUDABLE
20 TIME PERIODS UNDER SPEEDY TRIAL ACT;
21 FINDINGS AND ORDER

22 DATE: April 21, 2021

23 TIME: 1:00 p.m.

24 COURT: Hon. Sheila K. Oberto

25 This case was previously set for a status conference on April 21, 2021. By stipulation, the
26 parties now move to continue the status conference to June 30, 2021, and to exclude time between April
27 21, 2021 and June 30, 2021.

28 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
29 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
30 continue all criminal matters to a date after June 1. This and previous General Orders were entered to
31 address public health concerns related to COVID-19.

32 Although the General Orders address the district-wide health concern, the Supreme Court has
33 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
34 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
35 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
36 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at

1 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 2 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 3 or in writing”).

4 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 5 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 6 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 7 the ends of justice served by taking such action outweigh the best interest of the public and the
 8 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 9 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 10 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 11 the defendant in a speedy trial.” *Id.*

12 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 13 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 14 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 15 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 16 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 17 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 18 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 19 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 20 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

21 In light of the societal context created by the foregoing, this Court should consider the following
 22 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 23 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 24 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 25 pretrial continuance must be “specifically limited in time”).

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 27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on April 21, 2021.
 2. By this stipulation, defendant now moves to continue the status conference until June 30, and to exclude time between April 21, 2021, and June 30, 2021, under Local Code T4.
 3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that the discovery associated with this case includes investigative reports and related documents, body camera footage, criminal history reports, and court documents. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.
 - b) Counsel for defendant desires additional time to review discovery provided by the government, conduct additional investigation regarding the charges, consult with his client, and discuss potential resolution with the government. The parties are also scheduled to have an evidentiary hearing on the defendant's motion to suppress before the district court on April 28, 2021, which may affect resolution of the case.
 - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
 - d) The government does not object to the continuance.
 - e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.
 - f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of April 21, 2021 to June 30, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest

1 of the public and the defendant in a speedy trial.

2 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
4 must commence.

5 IT IS SO STIPULATED.

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7 Dated: April 12, 2021

PHILLIP A. TALBERT
Acting United States Attorney

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9
10 /s/ KATHERINE E. SCHUH
KATHERINE E. SCHUH
Assistant United States Attorney

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12 Dated: April 12, 2021

13 /s/ DOUGLAS FOSTER
DOUGLAS FOSTER
Counsel for Defendant
JASON CELES

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16 **FINDINGS AND ORDER**

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18 IT IS SO ORDERED.

19 Dated: April 13, 2021

20 /s/ Sheila K. Oberto

21
22 UNITED STATES MAGISTRATE JUDGE